

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

FEDERICO CUETO JIMENEZ,

Petitioner,

vs.

ROBERT LEGRAND, et al.,

Respondents.

Case No. 3:11-CV-00237-RCJ-(RAM)

ORDER

Petitioner has paid the filing fee (#4). The court has reviewed his petition for a writ of habeas corpus pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. The court will dismiss one ground, and the court will serve the petition upon respondents for a response to the remaining grounds.

Pursuant to a plea agreement, petitioner was convicted in the Eighth Judicial District Court of the State of Nevada of attempted lewdness with a child under fourteen (14) years. Petitioner did not appeal the judgment of conviction. Petitioner did file a post-conviction habeas corpus petition in the state district court, which denied the petition. Petitioner appealed, and the Nevada Supreme Court affirmed. Petitioner then commenced this action.

In ground 4, petitioner alleges that errors occurred in his state habeas corpus proceedings. “[A] petition alleging errors in the state post-conviction review process is not addressable through [federal] habeas corpus proceedings.” Franzen v. Brinkman, 877 F.2d 26, 26 (9th Cir. 1989); see also Gerlaugh v. Stewart, 129 F.3d 1027, 1045 (9th Cir. 1997). Ground 4 is without merit on its face, and the court dismisses it.

1 Petitioner has submitted a motion for appointment of counsel. Whenever the Court
2 determines that the interests of justice so require, counsel may be appointed to any financially
3 eligible person who is seeking habeas corpus relief. 18 U.S.C. § 3006A(a)(2)(B). “[T]he district
4 court must evaluate the likelihood of success on the merits as well as the ability of the petitioner to
5 articulate his claims pro se in light of the complexity of the legal issues involved.” Weygandt v.
6 Look, 718 F.2d 952 (9th Cir. 1983). There is no constitutional right to counsel in federal habeas
7 proceedings. McCleskey v. Zant, 499 U.S. 467, 495 (1991). The factors to consider are not
8 separate from the underlying claims, but are intrinsically enmeshed with them. Weygandt, 718 F.2d
9 at 954. After reviewing the petition, the court concludes that appointment of counsel is not
10 warranted in this action.

11 IT IS THEREFORE ORDERED that the clerk of the court file the petition for a writ
12 of habeas corpus and the motion for appointment of counsel

13 IT IS FURTHER ORDERED that the motion for appointment of counsel is
14 **DENIED.**

15 IT IS FURTHER ORDERED that ground 4 of the petition for a writ of habeas corpus
16 is **DISMISSED.**

17 IT IS FURTHER ORDERED that the clerk shall add Catherine Cortez Masto,
18 Attorney General for the State of Nevada, as counsel for respondents.

19 IT IS FURTHER ORDERED that the clerk shall electronically serve upon
20 respondents a copy of the petition. In addition, the clerk shall return to petitioner a copy of the
21 petition.

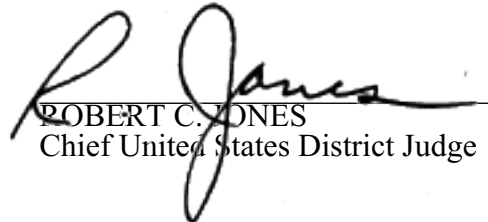
22 IT IS FURTHER ORDERED that respondents shall have forty-five (45) days from
23 the date on which the petition was served to answer or otherwise respond to the petition. If
24 respondents file and serve an answer, then they shall comply with Rule 5 of the Rules Governing
25 Section 2254 Cases in the United States District Courts, and then petitioner shall have forty-five
26 (45) days from the date on which the answer is served to file a reply.

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1 IT IS FURTHER ORDERED that henceforth, petitioner shall serve upon respondents
2 or, if appearance has been entered by counsel, upon the attorney(s), a copy of every pleading,
3 motion or other document submitted for consideration by the court. Petitioner shall include with the
4 original paper submitted for filing a certificate stating the date that a true and correct copy of the
5 document was mailed to the respondents or counsel for the respondents. The court may disregard
6 any paper received by a district judge or magistrate judge that has not been filed with the clerk, and
7 any paper received by a district judge, magistrate judge, or the clerk that fails to include a certificate
8 of service.

9 Dated: This 17th day of June, 2011.

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12 ROBERT C. JONES
13 Chief United States District Judge
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